

BORA LASKIN LAW LIBRARY



3 1761 03870 6206

**FIRST NATIONS AND THE LAW:  
CASES AND MATERIALS**

**Volume III**

**Patrick Macklem  
Faculty of Law  
University of Toronto**

**Fall 1994**

**These materials have been prepared exclusively for the use of  
students of the Faculty of Law, University of Toronto.**

AL 2 5 1994

BORA LASKIN LAW LIBRARY

SEP 15 1994

FACULTY OF LAW  
UNIVERSITY OF TORONTO


FIRST NATIONS AND THE LAW:  
CASES AND MATERIALS

Volume III

Patrick Macklem  
Faculty of Law  
University of Toronto

Fall 1994

These materials have been prepared exclusively for the use of  
students of the Faculty of Law, University of Toronto.



Digitized by the Internet Archive  
in 2018 with funding from  
University of Toronto

## TABLE OF CONTENTS\*

Page

### Volume III

#### XII. ABORIGINAL GOVERNMENT

##### A. Introduction

Chief Ovide Mercredi, *First Nations and Self-Determination*, in *Human Rights in the Twenty-First Century* (K.E. Mahoney & P. Mahoney eds., 1993) 161-66 .. 711

Frank Cassidy and Robert Bish, *Indian Government: Its Meaning in Practice* (1989), 160-66 ..... 716

Roger Gibbons, *Citizenship, Political, and Intergovernmental Problems With Indian Self-Government*, in *Arduous Journey: Canadian Indians and Decolonization* (Ponting ed. 1988), 369-377 ..... 720

##### B. Aboriginal Government and Constitutional Reform

Kathy L. Brock, *The Politics of Aboriginal Self-Government: A Canadian Paradox* (1991), 34 Can. Pub. Admin. 272 ..... 727

J. Edward Chamberlin, *Aboriginal Rights and the Meech Lake Accord*, in *Competing Constitutional Visions: The Meech Lake Accord* (Swinton & Rogerson eds., 1988), 11-19 ..... 736

*Re Native Women's Association of Canada and The Queen* (1992), 95 D.L.R. (4th) 106 (Fed. C.A.) ..... 743

*Draft Legal Text of the Charlottetown Accord* (October 9, 1992) ..... 752

*Globe and Mail*, July 27, 1993, A2 ..... 759

*Globe and Mail*, July 28, 1993, A21 ..... 760

*Globe and Mail*, July 28, 1993, A20 ..... 761

##### C. Aboriginal Government and the Courts

Michael Asch and Patrick Macklem, *Aboriginal Rights and Canadian Sovereignty: An Essay on R. v. Sparrow* (1991),

---

\*I am grateful to Peter Miller for his assistance in compiling these materials.

29 Alta. L. Rev. 498 .....	762
Hamar Foster, <i>Forgotten Arguments: Aboriginal Title and Sovereignty in Canada Jurisdiction Act Cases</i> (1992), 21 Man. L.J. 343 .....	766
Brian Slattery, <i>First Nations and the Constitution: A Question of Trust</i> (1992), 71 Can. Bar Rev. 261 .....	775
Royal Commission on Aboriginal Peoples, <i>Partners in Confederation: Aboriginal Peoples, Self-Government, and the Constitution</i> (1993) .....	783
<i>Casimel v. I.C.B.C.</i> (1993), 106 D.L.R. (4th) 720 (B.C.C.A.) .....	798
Kent Roach, <i>Remedies for Violations of Aboriginal Rights</i> (1992), 21 Man. L.J. 498 .....	807
 <b>D. Aboriginal Government and the Land Claims Process</b>	
Frank Cassidy and Robert Bish, <i>Indian Government: Its Meaning in Practice</i> (1989), 135-55 .....	818
Task Force to Review Comprehensive Claims Policy, <i>Living Treaties: Lasting Agreements</i> (Ottawa: Department of Indian Affairs and Northern Development, 1985) .....	832
Ministry of Indian Affairs and Northern Development, <i>Comprehensive Land Claims Policy</i> (1987) .....	841
Donald Purich, <i>The Inuit and Their Land</i> (1992) .....	855
<i>Report of the British Columbia Claims Task Force</i> (1991), 16-71 .....	864
 <b>E. Aboriginal Government and Institutional Design</b>	
David C. Hawkes and Allan M. Maslove, <i>Fiscal Arrangements for Aboriginal Self-Government</i> , in <i>Aboriginal Peoples and Government Responsibilities: Exploring Federal and Provincial Roles</i> (Hawkes & Maslove eds., 1989), 103-106 .....	916
Noel Lyon, <i>Aboriginal Self-Government: Rights to Citizenship and Access to Governmental Services</i> (1984), at 48-69 .....	919
C.E.S. Franks, <i>Public Administration Questions Relating to Aboriginal Self-Government</i> (1987) .....	940
John Weinstein, <i>Aboriginal Self-Determination Off a Land</i>	

Base (1986) .....	952
-------------------	-----

### XIII. INDIGENOUS PEOPLES IN THE UNITED STATES

#### A. General Principles

Robert N. Clinton, Nell Jessup Newton and Monroe E. Price, <i>American Indian Law</i> (3d ed. 1991), 137-164 .....	960
<i>Ex Parte Crow Dog</i> , 109 U.S. 556 (1883).....	980
Sidney L. Haring, <i>Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century</i> (Cambridge: Cambridge University Press, 1994), 101-130.....	983
<i>United States v. Kagama</i> , 118 U.S. 375 (1886) .....	989
<i>Lone Wolf v. Hitchcock</i> , 187 U.S. 554 (1903) .....	992
<i>Tee-Hit-Ton Indians v. United States</i> , 348 U.S. 272 (1954) .....	995
<i>Morton v. Mancari</i> , 417 U.S. 535 (1974) .....	1000
<i>Lyng v. Northwest Cemetery Protective Association</i> , 485 U.S. 439 (1988) .....	1007

#### B. Tribal Government

<i>Talton v. Mayes</i> , 163 U.S. 376 (1896) .....	1023
<i>Oliphant v. Suquamish Indian Tribe</i> , 435 U.S. 191 (1978) .....	1027
<i>Duro v. Reina</i> , 110 Sup. Ct. 2053 (1990) .....	1033
Frank Pommersheim, <i>The Contextual Legitimacy of Adjudication in Tribal Courts and the Role of the Tribal Bar as an Interpretive Community: An Essay</i> , 18 New Mex. L. Rev. 49 (1988) .....	1038

### XIV. INDIGENOUS PEOPLES IN AUSTRALIA AND NEW ZEALAND

Garth Nettheim, <i>Australian Aborigines and the Law</i> (1987), 2 Law & Anthropology 371-84, 399-400 .....	1050
<i>Mabo v. Queensland</i> , [1992] 5 C.N.L.R. 1 (Aust. H.C.) ..	1057
Aboriginal Provisional Government, <i>The Australian</i>	



<i>Constitution: An Aid to Justice or an Accomplice to Oppression</i> (June 4, 1993) .....	1072
<i>The Treaty of Waitangi</i> , 1975 New Zealand Statutes 114, Sch. 1 .....	1094
E. Taihakurie Durie, <i>The New Zealand Maorie and the Waitangi Tribunal</i> , in <i>Human Rights in the Twenty-First Century</i> (K.E. Mahoney & P. Mahoney eds., 1993) 149-59 .	1096
 <b>XV. INDIGENOUS PEOPLES AND INTERNATIONAL LAW</b>	
Robert Laurence, <i>Learning to Live With the Plenary Power of Congress Over the Indian People: An Essay in Reaction to Professor Williams' Algebra</i> , 30 Ariz. L. Rev. 413 (1988), at 428-30 .....	1104
Robert A. Williams, Jr., <i>Learning to Live With Eurocentric Myopia: A Reply to Professor Laurence's Learning to Live With the Plenary Power of Congress Over the Indian Nations</i> , 30 Ariz. L. Rev. 439 (1988), at 454-55 .....	1106
<i>Ominayak v. Canada</i> , U.N. Doc. CCPR/C/38/D/167/1984 (Human Rights Committee decision released March 28, 1990) ....	1107
<i>Grand Chief Donald Marshall and the Mikmaq Tribal Society v. Canada</i> , U.N. Doc. CCPR/C/43/D/205/1986 (Human Rights Committee decision released July 25, 1990) .....	1114
<i>R.L. et al. v. Canada</i> , U.N. Doc. CCPR/C/43/D/358/1989 (Human Rights Committee decision released April 1, 1991) .....	1119
<i>Draft Universal Declaration on the Rights of Indigenous Peoples</i> .....	1128
S. James Anaya, <i>The Capacity of International Law to Advance Ethnic or Nationality Claims</i> , 75 Iowa L. Rev. 837 (1990) .....	1132